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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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12 UNITED STATES OF) CR 82-0292-RSWL
13 AMERICA,)
14 Plaintiff,) ORDER
15 v.)
16)
17 GERALD L. ROGERS,)
18 Defendant.)
19 _____)

20 Currently before this Court is Appeal for Writ of
21 Error to Dismiss Unlawful Indictment to Void Conviction
22 ("Appeal for Writ") filed by Defendant Gerald L. Rogers
23 ("Defendant"). Having considered all papers and
24 arguments, **THE COURT NOW FINDS AND RULES AS FOLLOWS:**
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26 "In general, [28 U.S.C.] § 2255 provides the
27 exclusive procedural mechanism by which a federal
28 prisoner may test the legality of his detention." Ivy

1 v. Pontesso, 328 F.3d 1057, 1059 (9th Cir. 2003).

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3 Section 2255 states: "A second or successive motion
4 must be certified as provided in section 2244 [28
5 U.S.C. § 2244] by a panel of the appropriate court of
6 appeals to contain (1) newly discovered evidence . . .
7 or (2) a new rule of constitutional law." 28 U.S.C. §
8 2255(h).

9
10 "[A] prisoner may proceed under § 2241 [(writ of
11 habeas corpus)] if he can show that 'the remedy by
12 motion [under § 2255] is inadequate or ineffective to
13 test the legality of his detention.'" Ivy, 328 F.3d at
14 1059.

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16 In this case, Defendant purports to file the
17 current Appeal for Writ pursuant to 28 U.S.C. §
18 1651(a).¹

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20 However, "All Writs Act [i.e. § 1651] is a residual
21 source of authority to issue writs that are not
22 otherwise covered by statute. Where a statute
23 specifically addresses the particular issue at hand, it
24 is that authority, and not the All Writs Act, that is
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26
27 ¹ 28 U.S.C. § 1651(a) states: "The Supreme Court and all
28 courts established by Act of Congress may issue all writs
necessary or appropriate in aid of their respective jurisdictions
and agreeable to the usages and principles of law."

1 controlling." Pennsylvania Bureau of Correction v.
2 United States Marshals Service, 474 U.S. 34, 43 (1985).
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4 In this case, 28 U.S.C. § 2241 (writ of habeas
5 corpus) is the statute that specifically addresses the
6 issue at hand, and therefore, is the statute that
7 controls.
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9 Accordingly, the current Appeal for Writ under §
10 1651(a) is procedurally improper.
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12 Moreover, Defendant has made no showing why a
13 "motion under § 2255 is inadequate or ineffective to
14 test the legality of his detention." Ivy, 328 F.3d at
15 1059 (stating that the exception to file under § 2241
16 "is narrow [], and that § 2255's remedy is not
17 'inadequate or ineffective' merely because § 2255's
18 gatekeeping provisions prevent the petitioner from
19 filing a second or successive petition.").
20

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22 Accordingly, the current Appeal for Writ is
23 procedurally improper even if the Court treats it as
24 filed under § 2241.
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26 Furthermore, the current Appeal for Writ is
27 procedurally improper under § 2255 because it would be
28 a successive motion that has not been certified by a

1 panel of the appropriate court of appeals.

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3 In conclusion, the Court **DENIES** the Appeal for Writ
4 of Error to Dismiss Unlawful Indictment to Void
5 Conviction because it is procedurally deficient.

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7 **IT IS SO ORDERED.**

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10 **HONORABLE RONALD S.W. LEW**
11 Senior U.S. District Judge

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DATED: June 12, 2008